

JS 44 - No. CALIF (Rev. 4/97)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

**I. (a) PLAINTIFFS**

PEBBLE BEACH COMPANY, a California General Partnership

**DEFENDANTS**

MICHAEL CADDY, an individual

E-FILING  
APR 8

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** Monterey  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Janet L. Cullum (104336)  
Cooley Godward LLP  
Five Palo Alto Square, 3000 El Camino Real  
Palo Alto, CA 94306-2155  
(650) 843-5000

## ATTORNEYS (IF KNOWN)

C03 04550 JCS

**II. BASIS OF JURISDICTION** (PLACE AN 'X' IN ONE BOX ONLY)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6

Citizen of This State      Incorporated or Principal Place of Business In This State  
Citizen of Another State      Incorporated and Principal Place of Business In Another State  
Citizen or Subject of a Foreign Country      Foreign Nation

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- |   |   |  |   |  |   |  |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing	<input type="checkbox"/> 530 General		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		

**VI. CAUSE OF ACTION** (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 15 U.S.C. § 1501, et seq., federal and common law service mark infringement, trade name infringement, false designation of origin and dilution

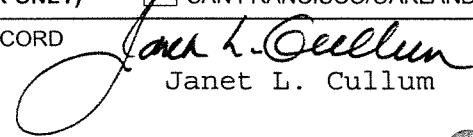
**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION DEMAND \$ Perm. Inj.  CHECK YES only if demanded in complaint:  
UNDER F.R.C.P. 23 JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".****IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)**

DATE

October 8, 2003

SIGNATURE OF ATTORNEY OF RECORD



Janet L. Cullum

NDC-JS44

COPY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-FILING

PEBBLE BEACH COMPANY, a California General  
Partnership

*Ans.*  
**SUMMONS IN A CIVIL CASE**

v.

MICHAEL CADDY, an individual

CASE NUMBER:

**C03 04550 JCS**

**TO:**

Michael Caddy, c/o Pebble Beach, Marine Drive, Barton-on-Sea, Hampshire BH25  
7DZ, United Kingdom

Michael Caddy, Townsend Studios, Curry Rivel, Somerset, United Kingdom 10oho

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY

Janet L. Cullum  
COOLEY GODWARD LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
Tel: (650) 843-5000  
Fax: (650) 857-0663

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

RICHARD W. WIEKING

CLERK

*Betty Walton*  
Betty J. Walton

(BY) DEPUTY CLERK

OCT 08 2003

DATE

NDCAO440

**ORIGINAL**

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 9 STEPHEN M. TRATTNER  
 10 77 West Street, Suite 310  
 11 Anapolis, MD 21401  
 12 Telephone: (443) 482-9155  
 13 Facsimile: (443) 482-9299

14 Attorneys for Plaintiff  
 15 PEBBLE BEACH COMPANY

RECEIVED  
 OCT 8 '03  
 RICHARD V. HORN  
 CLERK  
 U.S. DISTRICT COURT  
 NO. DIST. OF CA. S.J.  
 U.S. DISTRICT COURT  
 NO. DIST. OF CA. S.J.

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 04550

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

C03  
 Case No.

14 PEBBLE BEACH COMPANY, a California  
 15 General Partnership,

16 Plaintiff,

v.

17 MICHAEL CADDY, an individual,

18 Defendant.

19  
**COMPLAINT FOR SERVICE MARK AND  
 TRADE NAME INFRINGEMENT, FALSE  
 DESIGNATION OF ORIGIN AND DILUTION,  
 AND UNFAIR COMPETITION**

**JURY TRIAL DEMANDED**

Trial Date: Not Yet Set

20 Plaintiff, Pebble Beach Company ("Plaintiff" or "Pebble Beach"), for its Complaint  
 21 against Defendant, alleges as follows:

22 **I. THE PARTIES**

23 1. Plaintiff Pebble Beach Company is a California general partnership having its  
 24 principal place of business in the County of Monterey, California.

25 2. On information and belief, Plaintiff alleges that Defendant Michael Caddy  
 26 ("Defendant"), who is an individual, is a citizen of the United States.

27 **II. JURISDICTION AND VENUE**

28 3. This is an action for federal and common law service mark infringement, trade

1 name infringement, false designation of origin and dilution arising under both the Federal  
 2 Trademark Act of 1946, 15 U.S.C. § 1051, et seq., and the California Business & Professions  
 3 Code, §§ 14330 and 17200, et seq.

4       4. This Court has original jurisdiction over the federal infringement and dilution  
 5 claims set forth in this Complaint under 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a) and (b). This  
 6 Court has supplemental jurisdiction over the state law claims. The basis for assignment of this  
 7 action to the San Jose Division of this Judicial District is that a substantial part of the events or  
 8 omissions that give rise to the claims set forth below occurred in Monterey County.

9       5. On information and belief, Defendant actively advertises in and seeks business  
 10 from citizens and residents of the United States, including California, and knew or had reason to  
 11 know that the primary effects caused by his actions that give rise to the claims in the Complaint  
 12 will be experienced by Plaintiff and within this District; therefore this Court has personal  
 13 jurisdiction over Defendant and venue is proper under 28 U.S.C. § 1331.

14       6. United States businesses in general, and Plaintiff in particular, would be greatly  
 15 injured if individuals or other entities (owned by United States or foreign citizens) committed the  
 16 type of infringement and dilution as alleged in this Complaint and were not subject to the Lanham  
 17 Act, and to deny subject matter and personal jurisdiction under the circumstances would be  
 18 eminently unfair to businesses like Plaintiff residing in the United States.

### 19       **III. BACKGROUND STATEMENT**

20       7. In late 1879 or 1880, Plaintiff's predecessor-in-interest, the Pacific Improvement  
 21 Company ("Pacific"), acquired a substantial land holding in Monterey County, California, which  
 22 the state of California had identified, in pertinent part, as "Rancho El Pescadero."

23       8. In 1919, Plaintiff's predecessor-in-interest, Del Monte Properties Co. (collectively  
 24 "Plaintiff"), acquired Rancho El Pescadero, as part of a 18,000 acre landholding that it purchased  
 25 from Pacific. Pacific had begun referring to an area of the landholding as "Pebble Beach" in  
 26 1908. Plaintiff continued this practice. This area has never been a political subdivision of the  
 27 State of California and remains unincorporated.

28       9. In 1919, Plaintiff opened a golf course which it called PEBBLE BEACH.

1           10. Since its dedication in 1919, Plaintiff has hosted many major golf championships  
 2 at the PEBBLE BEACH golf course, including but not limited to this country's national  
 3 championship, the "U.S. Open" in 1972, 1982, 1992 and 2000. These tournaments have helped to  
 4 make the PEBBLE BEACH golf course and resort famous throughout the world, including Great  
 5 Britain.

6           11. In 1992, Golf Magazine proclaimed the PEBBLE BEACH golf course as the  
 7 greatest golf course in the world.

8           12. For decades, professional golf and travel writers and others have written hundreds  
 9 of unsolicited articles in major golf, general interest and travel magazines, as well as in books,  
 10 throughout the world, including Great Britain, highlighting the storied golf history of Plaintiff's  
 11 PEBBLE BEACH golf course, and PEBBLE BEACH resort accommodations, restaurant and bar  
 12 services.

13           13. For over 50 years prior to 2002, numerous famous celebrity entertainers would  
 14 stay at Plaintiff's PEBBLE BEACH resort and utilize Plaintiff's PEBBLE BEACH  
 15 accommodations, restaurant and bar services and their activities there were reported in the  
 16 national and international news.

17           14. For over 50 years, prior to 2002, Plaintiff referred to its trade name in providing its  
 18 resort services as "Pebble Beach" and/or the "Pebble Beach Company", which trade names on  
 19 information and belief have acquired secondary meaning in the United States and Great Britain  
 20 well prior to 2002.

21           15. Long prior to 2002, Plaintiff and the public in the United States and Great Britain  
 22 have used Plaintiff's famous mark PEBBLE BEACH to identify Plaintiff as the source of  
 23 Plaintiff's accommodations, restaurant and bar services, and have visited Plaintiff's famous  
 24 PEBBLE BEACH resort, and purchased Plaintiff's famous PEBBLE BEACH accommodations,  
 25 restaurant and bar services.

26           16. Plaintiff has gained a substantial and favorable reputation in connection with its  
 27 resort, accommodations, restaurant and bar services marketed, and sold under its PEBBLE  
 28 BEACH marks, and its "Pebble Beach" trade name.

1           17. Plaintiff's famous PEBBLE BEACH service marks for accommodations,  
 2 restaurant, and bar services and trade name serve as the triggering mechanism for the sale of  
 3 Plaintiff's services to residents in the United States and Great Britain.

4           18. Plaintiff is the owner of the inherently distinctive and acquired distinctive common  
 5 law service mark PEBBLE BEACH for accommodations, restaurant, and bar services. In  
 6 addition, Plaintiff is the owner of federal registrations on the Principal Register for the inherently  
 7 distinctive service mark PEBBLE BEACH for resort, hotel, restaurant, and bar services, Reg.  
 8 No.1,724,418 and Reg. No. 1,605,005.

9           19. Plaintiff is the owner of the domain name and website "PebbleBeach.com," which  
 10 is inherently distinctive and had acquired distinctiveness prior to 2002.

11          20. On information and belief, Defendant worked at a golf resort in Carmel,  
 12 California, near Plaintiff's PEBBLE BEACH resort prior to his selection of "Pebble Beach" as  
 13 the name of his businesses and to identify his accommodation, restaurant, and bar services, and  
 14 Defendant knew of Plaintiff's "Pebble Beach" fame before he selected "Pebble Beach" to identify  
 15 the source of his services described below.

16          21. On information and belief, Defendant intentionally selected "Pebble Beach" for  
 17 the name of and to identify his restaurant, bar and accommodation services to trade on the fame  
 18 and good will associated with Plaintiff's famous PEBBLE BEACH marks.

19          22. On information and belief, Defendant knew that the location of his facilities  
 20 attracted tourists from the United States and therefore wanted to select a name and service mark  
 21 that (i) would be known to many of these tourists, and (ii) had a reputation for luxury in the field  
 22 of accommodations, dining and bar services to create initial interest in and by his potential and  
 23 actual consumers and to create the impression in these consumers that his offered luxurious  
 24 services at a very reasonable price.

25          23. On information and belief, Defendant selected "Pebble Beach-uk.com" as the  
 26 primary if not exclusive domain name and website for his "Pebble Beach" facilities and services  
 27 because it was a domain name that would attract potential and actual customers residing in the  
 28 United States as the ".com" is a United States top level domain name, whereas if Defendant

1 intended to solicit primarily visitors from the United Kingdom he would have selected a top level  
 2 domain for the United Kingdom which is reflected by “.co.uk”.

3       **24.**      Defendant’s “Pebble Beach” web-site is interactive and solicits reservations from  
 4 United States citizens for his “Pebble Beach” services. On information and belief, Defendant  
 5 used the term “Pebble Beach” as a metatag for his “Pebble Beach” website.

6       **25.**      On information and belief, United States citizens have seen Defendant advertising  
 7 his Pebble Beach services on his “Pebble Beach” website.

8       **26.**      On information and belief, United States citizens who have seen Defendant’s  
 9 “Pebble Beach” website have subsequently visited and purchased services for one or more of his  
 10 “Pebble Beach” services.

11       **27.**      On information and belief, citizens from the United States, who had not seen  
 12 Defendant’s “Pebble Beach” website, have visited and purchased one or more of his “Pebble  
 13 Beach” services.

14       **28.**      On information and belief, Defendant’s “Pebble Beach” services are inferior  
 15 compared to the quality of services provided by Plaintiff under its PEBBLE BEACH service  
 16 marks.

17       **29.**      On information and belief, Defendant emphasizes the term “Pebble Beach” in  
 18 advertising his “Pebble Beach” services and further his attempt to trade on Plaintiff’s famous  
 19 “Pebble Beach” service marks by referring to himself or his company as “Pebble Beach”.

20       **30.**      On information and belief, Defendant has used and continues to use the mark  
 21 “Pebble Beach” knowing that Plaintiff had used “Pebble Beach” to identify Plaintiff’s  
 22 accommodation, restaurant and bar services.

23       **31.**      On information and belief, Defendant’s use of the term “Pebble Beach” in his  
 24 marks, trade name and domain name creates an initial interest in his potential and actual  
 25 customers due to the fame and reputation associated with Plaintiff’s PEBBLE BEACH service  
 26 marks and trade name alleged in this Complaint.

27       **32.**      On information and belief, Defendant’s use of the term “Pebble Beach” as alleged  
 28 herein has created a likelihood of confusion with Plaintiff’s PEBBLE BEACH service marks and

trade name.

33. On information and belief, Defendant's use of the term "Pebble Beach" as alleged herein has created actual dilution and a likelihood of dilution in terms of blurring and tarnishment.

34. On information and belief, Defendant has been unjustly enriched from the unauthorized use of the term “Pebble Beach” in his service marks, domain name and metatags.

35. Plaintiff sent Defendant two cease and desist letters in January and February 2003, demanding that he immediately cease and desist from any further use of the term "Pebble Beach." Since that time until shortly prior to the filing of this Complaint, the parties have attempted through counsel to resolve these claims but were unable to do so, and Defendant has continued to use "Pebble Beach" over Plaintiff's objections.

36. Plaintiff has suffered irreparable injury as a result of Defendant's unauthorized uses of and references to "Pebble Beach," and unless these uses and references are permanently enjoined, Plaintiff will continue to suffer irreparable injury.

## COUNT I

## **SERVICE MARK INFRINGEMENT UNDER § 32(1) OF THE LANHAM ACT**

37. Plaintiff incorporates by reference and re-alleges, as if fully set forth herein, paragraphs 1 through 36 of this Complaint.

38. Defendant's unauthorized use of Plaintiff's federal service marks PEBBLE BEACH (Reg. Nos. 1,724,418 and 1,605,005) for accommodations, restaurant and bar services, or the use of any other mark that is identical or confusingly similar to these federally registered PEBBLE BEACH service marks, including but not limited to Defendant's accommodation, dining, restaurant and bar services, pebblebeach-uk.com, and his use of a Pebble Beach metatag for his web-site, infringe Plaintiff's federally registered PEBBLE BEACH marks because such use is likely to cause confusion, mistake, or deception in violation of § 32(1) of the Lanham Act, 15 U.S.C. § 1114.

39. Defendant's acts alleged herein have caused Plaintiff to lose control over the reputation associated with its PEBBLE BEACH registered service marks Reg. Nos. No.1,724,418

and 1,605,005.

**40.** Defendant's acts alleged herein irreparably injure Plaintiff and its business, reputation, and goodwill, and will continue to do so unless and until they are permanently enjoined.

## COUNT II

**SERVICE MARK, TRADE NAME INFRINGEMENT AND FALSE DESIGNATION  
OF ORIGIN UNDER § 43(a) OF THE LANHAM ACT**

**41.** Plaintiff incorporates by reference and re-alleges, as if fully set forth herein, paragraphs 1 through 40 of this Complaint.

**42.** Defendant's unauthorized uses of the mark PEBBLE BEACH in connection with the identification and advertising of his accommodation, dining, restaurant and bar services, his trade name and website, or the use of any other mark that is identical or confusingly similar to Plaintiff's common law and federal PEBBLE BEACH service marks (Reg. Nos. 1,724,418 and 1,605,005) and Pebble Beach trade name, infringe Plaintiff's common law and federal PEBBLE BEACH service marks and trade names because such use is likely to cause confusion, mistake, deception as to the origin, sponsorship, or approval of Defendant's services, or deception as to the affiliation, connection, or association between Defendant and Plaintiff in violation of § 43(a) of the Lanham Act, 15 U.S.C. §1125 (a).

**43.** Defendant's acts alleged herein have caused Plaintiff to lose control over the reputation associated with its PEBBLE BEACH services marks and trade names.

44. Defendant's acts alleged herein irreparably injure Plaintiff and its business, reputation, and goodwill, and will continue to do so unless and until they are permanently enjoined.

### COUNT III

## DILUTION UNDER § 43(c) Of THE LANHAM ACT

**45.** Plaintiff incorporates by reference and re-alleges, as if fully set forth herein, paragraphs 1 through 44 of this Complaint.

**46.** Plaintiff's common law and federal PEBBLE BEACH service marks are famous,

and were famous among Defendant's actual and potential customers prior to Defendant's first use of his "Pebble Beach" services, domain name and metatag.

47. Defendant's use of "Pebble Beach" alleged herein has caused actual dilution because it has reduced Plaintiff's selling power in its PEBBLE BEACH famous service marks, and has whittled away at the ability of Plaintiff's famous PEBBLE BEACH service marks to identify only Plaintiff's services and has diluted the distinctive quality of Plaintiff's famous PEBBLE BEACH service marks by blurring and by tarnishment in violation of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

**48.** Defendant's acts alleged herein irreparably injure Plaintiff and its business, reputation, and goodwill, and will continue to do so unless and until they are permanently enjoined.

**COUNT IV**

**DILUTION UNDER § 14330 CALIFORNIA BUSINESS AND PROFESSIONS CODE**

**49.** Plaintiff incorporates by reference and re-alleges, as if fully set forth herein, paragraphs 1 through 48 of this Complaint.

**50.** Plaintiff's PEBBLE BEACH service marks are strong, distinctive and famous within the meaning of California Business and Professions Code §14330.

51. Defendant's use of PEBBLE BEACH as alleged herein has caused a likelihood of dilution and has whittled away at the ability of Plaintiff's famous PEBBLE BEACH service marks to identify only Plaintiff's services, and has diluted the distinctive quality of Plaintiff's famous PEBBLE BEACH service marks by blurring and by tarnishment in violation of California Business & Professions Code § 14330.

**52.** Defendant's acts alleged herein irreparably injure Plaintiff and the its business, reputation, and goodwill, and will continue to do so unless and until they are permanently enjoined.

COUNT V

## **UNFAIR COMPETITION AND DECEPTIVE TRADE PRACTICES**

53. Plaintiff incorporates by reference and re-alleges, as if fully set forth herein,

paragraphs 1 through 52 of this Complaint.

**54.** As a result of its unauthorized use of the service marks and trade name PEBBLE BEACH as described herein, Defendant has caused, and is likely to continue to cause, confusion or to cause mistake or to deceive the public, in violation of the common law of the State of California and Cal. Bus. & Prof. Code § 17220 et seq.

**55.** As a result of Defendant's acts as alleged above, Plaintiff has incurred damages in an amount to be proved at trial consisting of, among other things, diminution in the value of the goodwill associated with its marks and trade name.

**56.** Defendant is likely to mislead prospective users of his services as to the affiliation, connection, or association of Defendant and his website with Plaintiff or Plaintiff's services or as to the origin, sponsorship, or approval of Defendant's products, commercial activities or website by Plaintiff, causing purchasers to rely thereon, in violation of the common law of the State of California and Cal. Bus. & Prof. Code § 17200.

**57.** By reason of Defendant's acts, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation and goodwill, and Defendant has been and will continue to be unjustly enriched.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays:

1. That this Court grant a permanent injunction enjoining Defendant Michael Caddy and each of his partners, associates, agents, servants, and employees, and all others under his control or acting in concert therewith or having knowledge thereof, from advertising or offering goods or services in conjunction with any mark, word, term, name, symbol, or device in the United States and Great Britain that is identical or confusingly similar to the PEBBLE BEACH marks, for accommodation, dining, restaurant, and bar services, and from committing any other act that is likely to cause confusion, mistake, or deception. See 15 U.S.C. § 1116.

2. That this Court grant a permanent injunction enjoining Defendant Michael Caddy and each of his partners, associates, agents, servants, and employees, and all others under his control or acting in concert therewith or having knowledge thereof, from advertising or selling

1 goods or offering any services in conjunction with any mark, word, term, name, symbol, or  
2 device, in the United States and Great Britain that dilutes the distinctive quality of Plaintiff's  
3 PEBBLE BEACH service marks.

4       3. That this Court require Defendant Michael Caddy to assign his  
5 pebblebeach-uk.com and any other domain name that includes the term "Pebble Beach" to  
6 Plaintiff.

7       4. That this Court require Defendant Michael Caddy to account to Plaintiff for treble  
8 all of Plaintiff's damages and all profits or unjust enrichment which Defendant Michael Caddy  
9 has derived from the sale of any service which bears the mark PEBBLE BEACH, or which makes  
10 reference to PEBBLE BEACH, as well as award reasonable attorney fees and costs to Plaintiff.  
11 See 15 U.S.C. §§ 1117(a); 1125(c)(2).

12       5. That this Court grant Plaintiff such other and further relief as it should deem just.

13 Dated: October 8, 2003

COOLEY GODWARD LLP  
JANET L. CULLUM (104336)

TRATTNER & ASSOCIATES  
STEPHEN M. TRATTNER

Janet L. Cullum  
Attorneys for Plaintiff  
PEBBLE BEACH COMPANY

1                           **JURY DEMAND**

2                           Plaintiff requests a trial by jury.

3                           Dated: October 8, 2003

COOLEY GODWARD LLP  
JANET L. CULLUM (104336)

TRATTNER & ASSOCIATES  
STEPHEN M. TRATTNER

Janet L. Cullum  
Attorneys for Plaintiff  
PEBBLE BEACH COMPANY

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